



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	
[NAME REDACTED] ¹)	ADP Case No. 17-03455
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

10/25/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's information is not sufficient to mitigate the trustworthiness concerns raised by her history of financial problems. Her request for eligibility to occupy a position of trust is denied.

Statement of the Case

On February 29, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position for her job with a defense contractor. After reviewing the results of the ensuing background

¹ In September 2016, Applicant changed her name from [NAME REDACTED], as listed on the SOR, to [NAME REDACTED]. (See GX 1; AX C)

investigation, Department of Defense (DOD) adjudicators were unable to determine that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.²

On March 7, 2018, DOD issued Applicant a Statement of Reasons (SOR) alleging facts raising trustworthiness concerns addressed through the adjudicative guideline (AG)³ for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on August 3, 2018, and scheduled the hearing for September 28, 2018. The parties appeared as scheduled, and I admitted Government's Exhibits (GX) 1 – 8. Applicant did not object to any of the Government's exhibits. Applicant testified but did not submit any documents at the hearing. I received a transcript of the hearing (Tr.) on October 9, 2017. I left the record open after the hearing to allow Applicant time to submit additional relevant information. (Tr. 25 – 29, 65) The record closed on October 15, 2018, after I received Applicant's Exhibits (AX) A – H.⁴ All exhibits were admitted without objections.

Findings of Fact

Under Guideline F, the Government alleged that Applicant had not yet filed her federal (SOR 1.a) and state (SOR 1.b) income tax returns for the 2011 – 2014 tax years, and that she owed \$46,709 for 11 delinquent or past-due debts (SOR 1.c – 1.m). The largest of those debts are a \$17,986 federal income tax lien (SOR 1.c), and a \$20,084 debt remaining after a car repossession (SOR 1.e). In response, Applicant denied SOR 1.a and 1.b, claiming that she filed all of her past-due income tax returns in March 2016. She also denied the debt alleged at SOR 1.d, claiming that it is a duplicate of the debt alleged at SOR 1.i. She admitted the remaining allegations. Applicant provided explanatory remarks with each response, but she did not support her Answer with any corroborating documents. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 47 years old and is employed as a federal contractor, for whom she has worked since February 2018. She previously worked on two occasions for her current

² Required by DOD Directive 5220.6, as amended (Directive).

³ Adjudicators applied the adjudicative guidelines issued by the Director of National Intelligence on December 10, 2016, and effective for all adjudications on or after June 8, 2017.

⁴ AX A (12 pages) consists of IRS transcripts that reflect Applicant's income tax status for tax years 2011 through 2017. AX B (14 pages) consists of a summary of Applicant's debts and communications with a financial counseling firm. AX C is a single-page record of Applicant's petition to change her name. AX D (four pages) consists of Applicant's four paystubs between August 15, 2018 and September 30, 2018. AX E (15 pages) is a copy of the March 5, 2016 credit report also admitted as GX 5. AX F (20 pages) consists of information showing Applicant's current income tax status in the jurisdiction where she lives. AX G (30 pages) and AX H (five pages) consist of information about the debt management plan into which Applicant has entered with the financial counseling firm addressed in AX C.

employer between April 2013 and April 2016, when she was laid off for loss of the company's contract with the government, and between February 2004 and January 2009. She worked in a similar position for a different company between February 2009 and April 2013. (GX 1)

Between February 2004 and April 2016, Applicant earned between \$30 and \$35 an hour. She currently earns about \$32 an hour. Between April 2016 and February 2018, Applicant worked a variety of low-paying full and part-time jobs, earning an average of \$10,000 in annual income. Applicant was previously investigated for a position of public trust in 2004, when she was first hired by her current employer in February 2004. (GX 1; GX 7; GX 8; AX D; Tr. 41 – 44)

Applicant has two children, a daughter age 27 and a son age 20. Her son recently enlisted in the U.S. Air Force and serves part-time in the Air National Guard. Applicant's daughter is single and has four children ages 10 months to 10 years old. Applicant has never been married and has experienced financial problems at various times since about 1998. At that time, her daughter was seven years old and Applicant became pregnant with her son. The pregnancy became complicated and Applicant was unable to work for several months. As a result of lost income and increased expenses, she accumulated debts that were addressed during a personal subject interview with a government investigator in April 2005. Applicant avers she was able to resolve those debts after she started working in 2004. (GX 7 and 8; Tr. 34 – 36, 56)

Applicant attributes her current financial problems to the need to support her daughter when she first became pregnant in 2008. Since then, Applicant has provided an average of \$600 each month to her daughter and (now) four grandchildren. Over the past ten years, Applicant has relied on credit cards and, at times, payday and title loans, to cover a variety of expenses associated with supporting her daughter and grandchildren. Applicant also co-signed for a car loan for her daughter and was making payments for her daughter until October 2017. Her daughter's car was repossessed in January 2018, and Applicant has not yet been notified if the lender will demand repayment from Applicant of the balance remaining on that loan if Applicant's daughter is not able to do so. Applicant acknowledged that she already was past-due on most of her debts even before being laid off in April 2016. Applicant's car was repossessed in September 2017. The \$20,084 debt alleged at SOR 1.e represented the remaining balance on her car loan, but the amount Applicant actually owes was recently reduced to about \$11,700 after the car was re-sold. No payments have been made on that debt. (Answer; AX B; Tr. 32 – 33, 35 – 36, 44 – 46, 52 – 53, 56 – 57, 58 – 60, 62)

Applicant did not file her federal or state income tax returns on time for the 2011 – 2014 tax years. Through her post-hearing exhibits, she established that she filed those returns in March 2016. At that time, she also set up a payment plan with the IRS to repay \$17,986 in unpaid taxes. Her payments stopped in May 2016 after she was laid off in April 2016. As alleged at SOR 1.c, her IRS debt now is being enforced through a lien that was perfected in March 2017. Applicant testified that no further payments have been made since 2016 and that she now owes the IRS at least \$28,000 after interest and penalties.

As to Applicant's state taxes, it appears from the information she submitted post-hearing that she still owes \$375 for tax years 2013 and 2014. That amount reflects the application of her income tax refund for the 2017 tax year to her past-due taxes. Applicant averred that she also has been making \$125 monthly payments since March 2018 on a state tax debt that was in excess of \$2,000 with penalties, fees, and interest. (Answer; AX A; AX F; Tr. 30 – 31, 46 – 49)

Applicant denied that she owes the \$782 collection debt at SOR 1.d, claiming it is a duplicate of the collection debt owed to the same creditor at SOR 1.i. A review of available credit reports and court records presented by the parties is not conclusive of Applicant's claim. Even if Applicant established that the two debts are the same account, she did not establish that she has paid any of the debts alleged at SOR 1.c – 1.m. When Applicant answered the SOR in March 2018, she indicated that she was looking into using a non-profit credit repair and debt management firm; however, it was not until the week before her hearing that she contacted that firm. After the hearing, Applicant submitted documents showing that on October 9, 2018, nine days after her hearing, she finalized a debt management plan (DMP) with the debt management firm, whereby she would pay \$564 each month to satisfy SOR 1.c – 1.m and eight other debts not alleged in the SOR, all of which total in excess of \$101,000. Applicant's DMP payments were scheduled to begin on October 18, 2018, with a planned completion date of April 9, 2022. In reviewing her finances at the hearing, Applicant estimated that she has about \$600 remaining each month after expenses, not including her DMP payments. By contrast, as part of the DMP process, the debt management firm helped Applicant construct a personal budget. As of October 9, 2018, that budget showed that Applicant's monthly expenses exceeded her income by more than \$300. (GX 3 – 6; AX B; AX G; AX H; Tr. 32 – 34, 49 – 52, 58)

Policies

Eligibility for a position of public trust must be based on a determination that it is "clearly consistent with the interests of national security" to do so.⁵ All such adjudications must adhere to the procedural protections in the Directive before any adverse determination may be made. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors, commonly referred to as the "whole-person" concept, listed in the guidelines at AG ¶ 2(d).⁷ The presence or

⁵ Security Executive Agent Directive (SEAD) 4, Appendix A, Paragraph 1(d).

⁶ Directive, 6.3.

⁷ (1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of eligibility for a position of trust.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a position of trust for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one is entitled to a position of trust, an applicant bears a heavy burden of persuasion. A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring applicants possess the requisite judgment, reliability, and trustworthiness of one who will protect sensitive information as his or her own. Any reasonable doubt about an applicant's suitability for access should be resolved in favor of the Government.

Analysis

Financial Considerations

Applicant established that she filed, albeit late, her federal and state income tax returns in 2016. The allegations at SOR 1.a and 1.b are resolved for Applicant. Nonetheless, the facts established by this record as to SOR 1.c – 1.m, and regarding Applicant's finances in general reasonably raise a trustworthiness concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The SOR allegations reflect Applicant's current financial problems, which arose in 2008. Over the next ten years, Applicant accrued significant personal debt as she supported her daughter and grandchildren. Applicant's debts became unmanageable when she was laid off and had to live on a greatly reduced income between April 2016 and February 2018. Yet Applicant also acknowledged that she was behind on several

accounts even before she was laid off. Compounding her personal credit debts was significant federal and state tax debt that arose from her unexplained failure to file her income tax returns for four years. While she may be paying down her state tax debt, her federal tax debt has grown to \$29,000 and remains unresolved. Finally, as reflected in a prior background investigation, Applicant has experienced similar financial problems since 1998. All of the foregoing requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(f) (*failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required*).

I have also considered the following AG ¶ 20 mitigating:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control.

AG ¶ 20(a) does not apply because of the broad history of Applicant's financial struggles and the fact that her debts remain unresolved. Only AG ¶ 20(b) applies, in part. Applicant's most recent financial troubles began ten years ago when she started supporting her daughter and grandchildren. Although she was already behind on her bills when she was laid off in 2016, her greatly reduced income over most of the next two years greatly exacerbated her difficulties. However, AG ¶ 20(b) does not apply because Applicant did not establish that she acted responsibly under the circumstances. Without explanation, nearly seven months elapsed between her response to the SOR and her efforts to establish a DMP. It was not until just before her hearing that reached out to the debt management firm with whom she is now working. All of Applicant's debts remain unresolved. Although she is now enrolled in a DMP, the fact that Applicant has struggled with her finances for over 20 years requires an established track record (not evident in this record) of consistent debt payments, and of improved financial management that would prevent a recurrence of the circumstances presented herein. While AG ¶ 20(c) must be considered, its effectiveness is nullified by the recency of Applicant's efforts in that regard. On balance, the record evidence as a whole is not sufficient to mitigate the trustworthiness concerns raised under this guideline.

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has not yet established a sufficiently reliable record of sound financial management and consistent payments to resolve her debts. Applicant appeared sincere in her claims that she will overcome her current financial problems and avoid a recurrence of those problems. Nonetheless, the record evidence as a whole leaves me with significant doubts about Appellant's suitability for a position of public trust. Because protection of the national interest is the central focus of these adjudications, any remaining doubts must be resolved against the Applicant.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant
Subparagraphs 1.c – 1.m:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for public trust eligibility is denied.

MATTHEW E. MALONE
Administrative Judge